

IN THE HIGH COURT OF GUJARAT AT AHMEDABAD

SPECIAL CIVIL APPLICATION No 3631 of 1983

For Approval and Signature:

Hon'ble MR.JUSTICE S.K.KESHOTE

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1. Whether Reporters of Local Papers may be allowed to see the judgements?
 2. To be referred to the Reporter or not?
 3. Whether Their Lordships wish to see the fair copy of the judgement?
 4. Whether this case involves a substantial question of law as to the interpretation of the Constitution of India, 1950 of any Order made thereunder?
 5. Whether it is to be circulated to the Civil Judge?
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RAMGOPAL MAHARAJHSINH YADAV

Versus

STATE OF GUJARAT & OTHERS

Appearance:

MS DR KACHHAVAH for Petitioner
MR NIGAM SHUKLA for the Respondents.

CORAM : MR.JUSTICE S.K.KESHOTE

Date of decision: 13/08/96

ORAL JUDGEMENT

1. The counsel for the petitioner seeks permission of this court for withdrawal of this Special Civil Application to which the counsel for the respondents has no objection. Order accordingly. This Special Civil Application is dismissed as withdrawn. Interim relief which has been granted by this Court on 6-9-1983 in terms of Para-9(d) is vacated. Para no.9(d) reads as under:

pending admission, hearing and final disposal of

this petition direct the respondents to treat the petitioner on the post of Head Constable and to pay salary accordingly.

2. The petitioner joined the service on 23-11-1964 in Police force department as a police constable. He was transferred in the dogs squad as police constable on 11-12-1976. He was promoted to the post of Head constable in the dogs squad under the order dated 6-6-1979. The petitioner was transferred to Ahmedabad on 22-4-1982. He was ordered to join on 30th April, 1982.

3. The petitioner has made a grievance that he was ordered to be reverted orally to the post of constable. The petitioner, as it appears from the Special Civil Application, joined the post of constable on 3-5-1983 and his salary has also been fixed in the scale of constable. The petitioner has challenged this reversion order in this Special Civil Application and prayed therein that the respondents authority may be directed to treat the petitioner as continued in the grade on the post of Head constable, dogs squad, Ahmedabad, as if he has not been reverted to the post of constable and to give all the benefits from the date of said reversion. The prayer further has been made to pay the arrears of salary for which the petitioner is entitled in the pay scale of Head constable from June, 1982 and full month salary of May, 1982. This court has granted the stay order in favour of the petitioner in terms which are extracted below:

Rule. Heard on interim relief. The petitioner was promoted as Head Constable in Dog squad at Ahmedabad itself on 6-6-79 and transferred to Bhavnagar in September, 1980. So though he requested for transfer to his original post, that was of Head constable post. So interim relief in terms of Para-9(d) granted.

The petitioner would have got all the benefits of interim relief and he would have been given the salaries of Head constable by the respondents and would have worked for all these years on the said post.

4. So far as the withdrawal of this writ petition is concerned, it is the right of the petitioner but the question which arises for consideration of this court is, whether he can be allowed to retain the benefits which he got under the interim order of this court. The Supreme Court recently in the case of Senior Horticulturist & Anr. V/s. Mallaiah has considered whether the benefit of interim order made by the court should be allowed to be enjoyed by the petitioner, when he has not taken the

decision on merits and decides to withdraw the petition.

5. In the case before the Supreme Court there was dispute regarding the date of birth. The respondent therein claimed his date of birth to be 1-7-34 as against the recorded date of birth in the service record as 1-7-32. By interim order made by the Tribunal, the respondent therein was allowed to continue in the service till he attained the age of 60 years on the basis of two years itself in the year of birth otherwise he would have retired on 30th June, 1992. Thus, by virtue of the interim order, the respondent therein got an extended tenure in the service for two years. Thereafter the Tribunal disposed of the petition stating that since the petitioner has retired on attaining the age of 60 years on 30th June, 1994 that date may be taken as correct date of superannuation for working out the retirement benefits. The Tribunal did not decide the question whether the age of retirement was 58 years or he was permitted to continue by virtue of the difference in the year of birth. In those facts the Supreme Court has held that:

"This shows how the process can be abused by obtaining an interim order and thereafter allowing the petition to lapse after the purpose is served. Even before us in response to the notice the respondent has not chosen to appear because he has reaped the benefit of the interim order. We had an occasion in *Burn Standard Co. Ltd. & Ors. v. Shri Dinabandhu Majmudar & Anr.* (JT 1995(4) SC 23) to make a detailed order in such cases. It is necessary to emphasize that in such cases irreparable damage is caused to the institution which cannot be put back even if the employee is wrong in his contention. If the employee is allowed to reap the benefit through an interim order without a final adjudication by the Tribunal or High Court, as the case may be, it would tantamount to permitting the employee to abuse the process of the Tribunal/Court. That is the reason why in the afore-mentioned judgment we had emphasized that the Tribunal/Court should be slow in granting interim injunctions in such cases because it would not cause any hardship to the employee even if he is allowed to retire on the original birth date for the obvious reason that if he succeeds he can always get the monetary benefits to which he would have been entitled, had he not been retired earlier in point of time. In the decision mentioned above, this Court had observed that it would be

imprudent on the part of the High Courts to allow interim relief to such an employee for continuance in service. The same principle would apply where the Tribunal is exercising jurisdiction. We would once again draw the attention of the Tribunals/High Courts in this behalf. We direct that a copy of this order along with a copy of the judgment in Burn Standard Co. case be circulated to the High Courts as well as the Tribunals.

In the said case, though Supreme Court has not interfered with the order, but the decision has been given. In the present case, the petitioner has challenged the order of his reversion and he was protected by interim relief. He retired from the higher post on which he was working in pursuance of the interim relief granted by this Court. Now when he has retired, the petitioner's counsel has prayed for the withdrawal of this Special Civil Application. This shows how the process has been abused by obtaining the interim order and thereafter allowing the petition to lapse after the purpose is served. It is a case where the petitioner has abused the process of the court and he has reaped all the benefits under the interim relief, and when the matter has come up for hearing, he withdrew the same. This Court will not permit the petitioner to take the benefits of the interim relief without getting the matter decided on merits.

6. It is hereby clarified that the stay order granted by this Court stands vacated and as such, whatever relief which has been enjoyed by the petitioner under the interim order of this court shall be realizable by the respondent from him.

7. The respondent shall pass the necessary order of giving effect to the order of reversion made, which is impugned in this Special Civil Application by the petitioner. His pay should be accordingly fixed for the lower post and his pension and other retirement benefits shall also be fixed accordingly. However, whatever amount which is found recoverable from him shall be recovered from him in the reasonable monthly installments to be determined by the officer concerned.

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